

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No: 19-03038-01-CR-S-BP

JOSHUA S. CRECELIUS,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through Timothy A. Garrison, United States Attorney for the Western District of Missouri, and the undersigned attorney, respectfully submits this sentencing memorandum in the above-captioned matter. For the reasons set forth below, the Government recommends that this Court sentence Defendant to a term of incarceration of 70 months for Count One, a consecutive period of 60 months' imprisonment for Count Two, and an appropriate term of supervised release.

I. BACKGROUND

On August 5, 2019, Defendant pleaded guilty to Count One of the Superseding Information, charging him with conspiracy to distribute 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(B); and Count Two of the Superseding Information, charging him with possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A). On November 21, 2019, the final Presentence Investigation Report ("PSR") was filed, indicating that Defendant's total offense level, after acceptance of responsibility, for Count One is 21, with a criminal history category of V. (PSR ¶ 86.) Therefore, Defendant's sentencing

range for Count One is 70 to 87 months under the Guidelines. (PSR ¶ 86.) The statutory maximum sentence for Count One is 40 years' imprisonment. (PSR ¶ 84.) As to Count Two, Defendant is subject to a statutory minimum sentence of 60 months' imprisonment, consecutive to Count One. (PSR ¶¶ 84–86.) Neither party has lodged objections to the PSR.

II. LEGAL STANDARD

Although the Guidelines are no longer mandatory, *United States v. Booker*, 543 U.S. 220 (2005), sentencing still begins with a properly calculated advisory Guidelines range. *See Gall v. United States*, 128 S. Ct. 586, 596 (2007); *Rita v. United States*, 127 S. Ct. 2456, 2464–65 (2007); *Booker*, 543 U.S. at 245–46; *United States v. Plaza*, 471 F.3d 928, 930 (8th Cir. 2006). Next, the Court must decide if a traditional departure under the Guidelines is appropriate, thus creating an advisory Guidelines sentencing range. *Plaza*, 471 F.3d at 930. After calculating the advisory Guidelines range, the Court considers that range, along with all the factors listed in 18 U.S.C. § 3553(a), in arriving at the final sentence. *Kimbrough v. United States*, 128 S. Ct. 558, 564 (2007); *Plaza*, 471 F.3d at 930.

III. DISCUSSION

The Court must "impose a sentence sufficient, but not greater than necessary" to address the factors enumerated in 18 U.S.C. § 3553, including the Guidelines issued by the U.S. Sentencing Commission. These factors include the nature and circumstances of the offense, the history and characteristics of the defendant, the need to promote respect for the law, the need to afford adequate deterrence to criminal conduct, the need to protect the public from further crimes committed by Defendant, and the need to provide Defendant with education, vocational training, or other correctional treatment. The Government agrees with Defendant that a sentence of 70 months' imprisonment for Count One, with a consecutive sentence of 60 months' imprisonment for Count

Two, is a sentence that is sufficient, but not greater than necessary, in light of the factors set forth in section 3553. The Government believes such a sentence is appropriate when balancing the seriousness of Defendant's conduct against his personal characteristics.

IV. CONCLUSION

Based on the foregoing factors, the Government recommends that this Court impose a sentence of 70 months' imprisonment for Count One, a consecutive period of 60 months' imprisonment for Count Two, and an appropriate term of supervised release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on December 10, 2019, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ Byron H. Black
Byron H. Black
Assistant United States Attorney